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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

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MM Docket No. 87-268

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COMMENTS OF PULITZER BROADCASTING COMPANY

Pulitzer Broadcasting Company ("Pulitzer"), the licensee of nine television broadcast stations, two television satellite stations, and the permittee of a third television satellite station,^{1/} by its attorneys, hereby submits comments in response to the Sixth Further Notice of Proposed Rule Making ("Further Notice")^{2/} in the above-captioned proceeding.^{3/} In addition, Pulitzer is a signatory to the joint "Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking" ("Broadcaster Comments") filed simultaneously with these comments.^{4/} As a general matter, Pulitzer supports the concept of full accommodation of

1/ Pulitzer, either directly or through wholly-owned subsidiaries, is the licensee of the following television broadcast stations: WDSU, New Orleans, LA; WESH, Orlando, FL; WGAL, Lancaster, PA; WLKY, Louisville, KY; WXII, Greensboro, NC; WYFF, Greenville, SC; KCCI, Des Moines, IA; KETV, Omaha, NE; and KOAT, Albuquerque, NM. In addition, Station KOAT operates satellite television stations KOCT, Carlsbad, NM and KOVT, Silver City, NM, and is the permittee for Station KOFT, Gallup, NM.

2/ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, FCC 96-317, released August 14, 1996 (Sixth Further Notice of Proposed Rule Making in MM Docket No. 87-268) ["Further Notice"].

3/ Pulitzer and its stations have participated in previous phases of this proceeding either as signatories to joint broadcaster submissions, or through the filing of separate comments.

4/ Pulitzer supports the policy arguments in the joint broadcasters' comments, but does not support adoption of the specific Modified Table included with those comments in its present form.

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all existing full-service television stations in a digital television ("DTV") table of allotments/assignments ("DTV table"); the goal of replicating current NTSC service with DTV service; and the adoption of a DTV table that will ensure an even-handed and fair transition of all full-service stations from analog to digital.

However, Pulitzer recognizes that the technical decisions affecting the DTV table do not occur in a vacuum. The resolution of the technical issues in the Further Notice will have real and measurable impacts on the businesses of existing television licensees. Significant reductions in, or displacement of, viewers for specific stations may occur. In turn, this may result in severe negative externalities for both the viewing public and for station owners -- including the unintended shifting of equity values among television stations in the marketplace. Pulitzer strongly opposes the potential recasting of station values through hastily drawn initial DTV channel assignments.

The adoption of a DTV table before DTV broadcast transmission technology is widely utilized and perfected must occur of necessity. However, this approach carries with it many risks and uncertainties. For example, to date there has been only limited field testing, and the broadcasting industry is in the process of conducting further tests. Many issues addressed in the Further Notice are clouded by uncertainty about the feasibility of specific channels for DTV use; DTV propagation characteristics on VHF versus UHF channels; the feasibility of specific NTSC/DTV channel pairings; DTV receiver characteristics; and the appropriate DTV transmission power to achieve replication.

Accordingly, Pulitzer supports the Commission's proposals that embrace flexibility to make pre-adoption and post-adoption changes to the DTV table. In addition, Pulitzer advocates additional flexibility as described below. However, Pulitzer opposes the

"core spectrum" proposal, opposes the premature adoption of any DTV table, and advocates principles of fairness regarding the granting of pending modification applications.

I. THE CORE SPECTRUM APPROACH IS NOT IN THE PUBLIC INTEREST AND WOULD HAVE HARSH IMPACTS ON A SIGNIFICANT NUMBER OF TELEVISION LICENSEES

Pulitzer opposes the proposal to allocate and to assign DTV channels on the basis of "core" DTV spectrum as a means to accelerate and to optimize the Commission's goal of spectrum reclamation. This core DTV spectrum assumption is not grounded in experience with DTV technology, and, hence, may ignore important considerations affecting broadcast television service. Pulitzer recommends that spectrum reclamation decisions be made by the FCC at the end of the NTSC/DTV transition, not at the DTV table design phase.

The use of the core spectrum assumption would be extremely short-sighted in terms of the impact on television viewers, television station licensees, and on long-term government communications policy and fiscal interests. Most importantly, the core spectrum assumption would create harsh inequities for certain stations that receive DTV channel assignments outside of the core when their NTSC channels are also outside of the core. The Further Notice states that only seventeen stations fall into this category.^{5/} One of those stations, WYFF(TV), NTSC Channel 4, Greenville, South Carolina, a Pulitzer station, not only was paired with a transitional DTV channel that ultimately would be reclaimed by the

^{5/} Further Notice, supra note 1, at 39 ¶ 92.

FCC, but was paired with a transitional DTV channel that provides less replication than DTV channels provided to its marketplace competitors.^{6/}

Consequently, the adverse impact on WYFF(TV) would occur both during and after the transition. During the transition, many current viewers of WYFF(TV) would not be able to receive WYFF(TV)'s DTV signal, while a larger percentage of current viewers of the other stations in the market would be able to receive the DTV signals of those stations. At the end of the transition, WYFF(TV) would be forced to vacate both its NTSC channel and its transitional DTV channel at great expense. As a result, WYFF(TV) would suffer the distinct competitive disadvantage of losing all the benefits of channel-related marketplace identity at the end of the transition -- an injury not equally shared by other stations in the market.^{7/} Those other stations would have the opportunity during the transition to establish strong DTV channel identity with viewers. Most significantly, at the end of the transition WYFF(TV) would not be assured of receiving a permanent DTV channel of comparable coverage and quality to its former channels or to the channels in use by other stations in the market.

Assuming *arguendo* that the Commission decides to adopt a core spectrum approach, Pulitzer recommends that the core spectrum be modified to include all of the

6/ The DTV table estimates that WYFF(TV) (Channel 4) would achieve approximately 94 % replication of its NTSC coverage utilizing Channel 60 for DTV. In contrast, WGGS(TV) (Channel 16) would achieve approximately 98 % replication utilizing Channel 35 for DTV, and WNTV(TV) (Channel 29) would achieve approximately 99 % replication utilizing Channel 2 for DTV.

7/ The Further Notice correctly identifies the issue of frequency labeling as a significant issue. See Further Notice, *supra* note 1, at 33-34 ¶¶ 78-79. However, none of the proposals for frequency labeling in the Further Notice would lessen the impact on WYFF under the proposed DTV table.

current VHF channels (Channels 2-13) for transitional and permanent DTV use. In a previous phase of this proceeding, broadcasters demonstrated the significant public interest benefits of utilizing intermixed VHF and UHF channel assignments.^{8/} Simply stated, a DTV table utilizing both VHF and UHF channels will permit broadcasters to provide more service to the public.

In addition, if the Commission decides to implement a core spectrum approach, Pulitzer recommends that special treatment be afforded to stations suffering the harsh inequity of forfeiting both NTSC and DTV channels. At a minimum, these stations should be afforded a priority in the grant of permanent DTV channels at the end of the transition. Specifically, these stations should be assigned a permanent DTV channel within the core spectrum before stations with both the DTV and the NTSC channels within the core are permitted to exercise the option of converting their transitional DTV operations to the former NTSC channels. Moreover, the costs of relocation from outside the core should be reimbursed by the entities that acquire the reclaimed spectrum at auction.

II. FLEXIBILITY IN THE LOCATION OF DTV TRANSMITTER SITES IS IN THE PUBLIC INTEREST

The Further Notice proposes to allot DTV channels on the basis of current transmitter sites, rather than community reference points. It solicits comment regarding any circumstances where it might be desirable to evaluate DTV allotments on the basis of sites other than those occupied by existing TV stations.^{9/} Pulitzer supports the proposal to use existing transmitter sites generally, but encourages the Commission to adopt a policy of

^{8/} The Commission has explicitly agreed. See Further Notice at ¶ 19.

^{9/} Id. at 23 ¶¶ 55-56.

flexibility that would permit station licensees to specify an alternative set of coordinates for the initial DTV allotment (Pre-adoption changes) where public interest considerations support such a change.^{10/} After an initial DTV table is adopted, Pulitzer advocates a policy of flexibility that would permit station licensees to specify an alternative set of coordinates within the proposed three-mile radius of the existing transmitter site, or any other distance from the current transmitter site (Post-adoption changes) provided that: (1) service from the alternative site meets the requirements for coverage of the community of license; and (2) operation from the alternative site meets either the DTV minimum spacing requirements, or other engineering criteria that ensures that significant interference to other stations will not occur.

The Further Notice indicates that the Commission has a basis for believing that changes within a three-mile radius would likely not have a significant effect on station service areas. Similarly, changes beyond the three-mile radius that do not significantly affect station service areas should not be prohibited. In addition to providing flexibility for individual station site changes for DTV operation, this type of policy may facilitate two or more stations within a given market agreeing to utilize a new common antenna site for DTV operations, thereby potentially accelerating service to the public, reducing transition costs, and improving service to the public.

^{10/} For example, if two or more stations agree to pursue a new common antenna site in that market, then the Commission should permit the specification of the new coordinates for purposes of making initial DTV allotments/assignments to those stations. Common antenna sites are in the public interest as they minimize zoning disputes, facilitate more rapid commencement of service to the public, and minimize entry costs to broadcasters.

III. FUTURE GRANT OF MODIFICATION APPLICATIONS PENDING AS OF THE FURTHER NOTICE ADOPTION DATE SHOULD NOT AUTOMATICALLY BE SUBJECT TO THE OUTCOME OF THIS RULEMAKING

One of the ordering clauses in the Further Notice states, "effective immediately as of the close of business on the date of adoption of this Further Notice, the Commission will condition the grant of any modifications of the technical parameters of existing full service NTSC stations on the outcome of this rule making proceeding."^{11/} This ordering clause is explained in the Further Notice as reflecting the concern that modification of existing stations could substantially affect the service area replications provided in the draft DTV Table.^{12/} The Further Notice seeks comment on whether this condition should involve different consequences for applications for modifications on file with the Commission as of the date of adoption of the Further Notice, as opposed to such applications filed after that date.

Pulitzer opposes the Commission's proposal automatically to condition the grant of all pending modification applications on the outcome of this rule making proceeding. In the first place, the Commission gave no notice of its intention to adopt such a policy as to modification applicants, and, indeed, the Commission previously declined to adopt such a policy.^{13/} Many applicants relied upon this previous decision in preparing and filing their pending modification applications and would be unfairly prejudiced by this unforeseeable and

^{11/} Further Notice, supra note 1, at 46 ¶ 106.

^{12/} Id. at 26 ¶ 63.

^{13/} Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 7 FCC Rcd 5376, 5383 ¶ 38 (Second Further Notice of Proposed Rule Making in MM Docket No. 87-268).

abrupt reversal.^{14/} Moreover, application of this policy to all pending applications would be arbitrary and capricious: the fact that some older applications remain pending while other applications, filed more recently, have been granted, in many cases is completely serendipitous. Application of the policy in such circumstances would differentiate among similarly-situated applicants -- singling some out for potentially significant financial consequences -- purely on the unpredictable vagaries of the Commission's processing schedule. Each pending modification application should be considered on a case-by-case basis to determine whether the factual and legal circumstances and the individual equities warrant application of this new policy. Important consideration in this calculus should be the time of filing of the application, and the nature of the modification in the context of construction of initial NTSC station facilities.

As the Further Notice correctly implies in its request for comments, the Commission should differentiate between modification applications already pending as of the date of adoption of the Further Notice and those filed after that date. Applicants in the latter class have less of a claim of prejudice because they undertook the investment in the facilities change with full knowledge of the uncertainties that might stem from this proceeding. By contrast, many applicants in the former group had not such notice. These licensees filed applications in some instances many years ago, based on business judgments concerning the value the facilities would bring to their service and to their stations, and have spent considerable sums of money in prosecuting these applications. Blanket application of the

^{14/} The FCC table is based on the FCC's TV Engineering Data Base as of May 13, 1996. The industry has identified many errors or discrepancies involving the data base, and corrections should be made to the data base before an initial DTV table is adopted. Moreover, the final DTV table should be based on the most recent information available -- there should be nothing "magic" about the data as of May 13, 1996.

Commission's policy would unfairly and irrationally upset the reasonable expectations upon which these actions were taken.

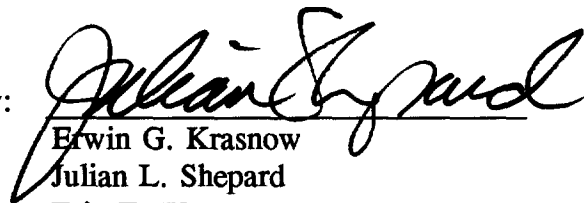
IV. CONCLUSION

Pulitzer does not support the adoption of either the FCC's proposed DTV table or the industry's Modified Table in their present form. However, Pulitzer supports the recommendations for revision and improvement of the proposed DTV table contained in the Broadcaster Comments and encourages the Commission to adopt proposals in the Further Notice that embrace flexibility to make pre-adoption and post-adoption changes to the DTV table. Pulitzer strenuously opposes the "core spectrum" proposal, opposes the premature adoption of any DTV table, and advocates principles of fairness regarding the granting of pending modification applications.

Respectfully submitted,

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